

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERRY LEE SMITH,) NO. CV 15-2360-RGK (AS)
Petitioner,)
v.) **ORDER DISMISSING ACTION
FOR LACK OF JURISDICTION**
STEVEN SUZUKI, Warden,)
Respondent.)

)

On March 31, 2005, Terry Smith ("petitioner") filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition"), pursuant to 28 U.S.C. § 2254 (Docket Entry No. 1). Title 28 U.S.C. § 2254 empowers the Court to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The Court need neither grant the habeas petition nor order a return if "it appears from the application that the applicant or person detained is not entitled thereto." Id. at § 2243; see also Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts ("If it plainly appears from the petition and any attached

1 exhibits that the petitioner is not entitled to relief in the district
 2 court, the judge must dismiss the petition and direct the clerk to
 3 notify the petitioner.").

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5 "[T]he petition is expected to state facts that point to a 'real
 6 possibility of constitutional error.'" Rule 4 of the Rules Governing §
 7 2254 Cases in the United States District Courts, Advisory Committee
 8 Notes, 1976 Adoption (quoting Aubut v. Maine, 431 F.2d 688, 689 (1st
 9 Cir. 1970)); see also Calderon v. U.S. Dist. Court, 98 F.3d 1102, 1109
 10 (9th Cir. 1996) (Schroeder, J., concurring), ("Thus the facts in a
 11 habeas petition need not be so detailed as to establish *prima facie*
 12 entitlement to habeas relief; they are sufficient if they suggest the
 13 real possibility that constitutional error has been committed.")
 14 (italics in original). However, where the allegations in the petition
 15 are vague or conclusory, palpably incredible, or patently frivolous or
 16 false, courts are authorized to dismiss the petition summarily. See
 17 McFarland v. Scott, 512 U.S. 849, 856, (1994); Hendricks v. Vasquez, 908
 18 F.2d 490, 491 (9th Cir. 1990).

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20 This Court notes that this is petitioner's seventeenth lawsuit in
 21 the past twelve years: (1) CV 03-5519-RGK (FMO); (2) CV 04-3335-RGK
 22 (FMO); (3) CV 04-3761-UA (FMO); (4) CV 05-1861-UA (FMO); (5) CV 06-7002-
 23 RGK (FMO); (6) CV 06-7003-UA (FMO); (7) CV 07-2561-RGK (FMO); (8) CV 08-
 24 0175-RGK (FMO); (9) CV 08-0343-UA (FMO); (10) CV 08-2731-RGK (FMO); (11)
 25 CV 08-7103-RGK (FMO); (12) CV 09-0062-RGK (FMO); (13) CV 09-4892-RGK
 26 (FMO); (14) CV 09-8300-UA (FMO); (15) CV 09-8301-RGK (FMO); and (16) CV
 27 13545-RGK (FMO). With the exception of CV 04-3335-RGK (FMO), which was
 28 dismissed for failure to exhaust, and CV 03-5519-RGK (FMO), which

1 petitioner voluntarily dismissed after being given six opportunities to
 2 amend his petition, all of petitioner's cases have been summarily
 3 dismissed. The instant case is no exception. First, large portions of
 4 the current Petition are vague and unintelligible. For example, in
 5 describing the place of detention, petitioner states, "Robbery and
 6 Burglar (sic)," and for place of conviction and sentence, petitioner
 7 states, "misdemeanor[.]" (Petition at 2).¹ Further, in describing the
 8 grounds he raised in a petition for review in the California Supreme
 9 Court, he states: "I Did Appeal at California For Writ of On Lind (sic)
 10 Buchser Petition for Writ of Habeas Corpus I filed A Motions Linda
 11 Buchser Attorney at Law [.]" (Id. at 3) (capitalization omitted).

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13 Second, the Petition does not provide a narrative description of
 14 petitioner's claim(s), but instead makes unintelligible, rambling
 15 statements. (See Petition at 5, 8). For example, in Ground One,
 16 petitioner asserts, "Your current M.E.P.D. is 10-17-2033" and the
 17 following supporting facts: "I need a new parole date 20015 (sic) 2019
 18 Do I have 85% or 80% for my for POP 47 I have two misdemeanor E.P.R.D.
 19 Back in \90 to 84\ Barglar (sic) Robbery[.]" (Id. at 8). In Ground
 20 Two, petitioner states, "I was convicted of robbery in 1990 May 20 I
 21 convicted (sic) of Burglary in which L.A. County did use ot strike me
 22 out the sentencing Judge struck me out without supporting [.]"
 23 (capitalization omitted). In Ground Three, he states, "One Strike was
 24 back in 1978 it was A years ago I was a Juvenile at L.P." (Id. at 5)
 25 (capitalization omitted). In Ground Five, he states, "I was you to know

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27 ¹ For ease of reference and because the page numbers on the form
 28 petition have not been filed sequentially, all citations are to the
 Court's electronic docket.

1 that Lillie Grant gave a false statement to the Court[.]" It appears
 2 that, even accepting the allegations as true, petitioner can prove no
 3 set of facts that would entitle him to relief or otherwise state a
 4 cognizable habeas claim. The Petition is unintelligible and vague and
 5 does not contain any allegation that petitioner is in state custody
 6 pursuant to an adjudication that was contrary to, or involved an
 7 unreasonable application of, clearly established federal law or is in
 8 custody in violation of the laws of the Constitution or laws or treaties
 9 of the United States. See McFarland, 512 U.S. at 856 ("Federal courts
 10 are authorized to dismiss summarily any habeas petition that appears
 11 legally insufficient on its face[.]"); Shaffer v. Duncan, 2001 WL
 12 263237, at *2 (N.D. Cal. 2001) (finding that habeas petition "provides
 13 insufficient information to state a cognizable claim" because "[l]arge
 14 portions of text are simply unintelligible[.]"); In re Hunter, 1995 WL
 15 261459, at *2-3 (N.D. Cal. 1995) (dismissing habeas petition because it
 16 is "a dense and impenetrable mass of verbiage[,] and dismissing civil
 17 rights complaint that "combines nonsensical legalistic language with
 18 unintelligible rambling complaints").

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20 Third, to the extent that petitioner is challenging his lack of a
 21 parole date, (see Petition at 8 ("I need A New Parole Date"), the
 22 assertion is patently frivolous. "Inmates serving life sentences become
 23 eligible for parole hearings automatically, one year prior to their
 24 minimum eligible parole date[.]" Cal. Dep't of Corr. & Rehab., Lifer
 25 Parole Process, <http://www.cdcr.ca.gov> (italics in original).
 26 Petitioner was sentenced in 2001 to an indefinite term of 35 years to
 27 life. (See Terry Lee Smith v. M. Yarborough, Warden, No. CV 04-3335 RGK
 28 (FMO), Report and Recommendation of United States Magistrate Judge,

1 filed on September 22, 2005, at 2; see also Petition at 2). Thus,
 2 petitioner is not eligible for his first parole hearing until some time
 3 in 2035.

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5 Finally, to the extent that the allegations in the Petition may
 6 state a civil rights claim, the Court has considered whether to ignore
 7 the mislabeling and construe this action as a civil rights action
 8 brought pursuant to 42 U.S.C. § 1983. See Wilwording v. Swenson, 404
 9 U.S. 249, 251 (per curiam), superseded by statute on other
 10 grounds as recognized by Woodford v. Ngo, 548 U.S. 81, 126 S.Ct. 2378
 11 (2006); Hansen v. May, 502 F.2d 728, 729-30 (9th Cir. 1974). However,
 12 petitioner's allegations are insufficient to state a claim for violation
 13 of his federal civil rights. (See Petition at 5, 8). Moreover,
 14 petitioner failed to submit a fully completed Declaration in Support of
 15 Request to Proceed In Forma Pauperis, and a Certificate of Funds in
 16 Prisoner's Account that is signed by an authorized officer, which are
 17 required in order to file a complaint in a civil action without
 18 prepayment of fees. See 28 U.S.C. §§ 1915(a)(1)-(2).

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20 Under the circumstances, the Court is persuaded that the
 21 jurisdictional requisite for a § 2254 petition has not been met here.
 22 See Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979, as amended June
 23 29, 1979) ("[T]he writ of habeas corpus is limited to attacks upon the
 24 legality or duration of confinement."); Badea v. Cox, 931 F.2d 573, 574
 25 (9th Cir. 1991) ("Habeas corpus proceedings are the proper mechanism for
 26 a prisoner to challenge the legality or duration of confinement.")
 27 (internal quotation marks and citation omitted).

1 Based on the foregoing, IT IS ORDERED THAT the case shall be
2 summarily dismissed without prejudice for lack of jurisdiction. See
3 Rule 4 of the Rules Governing § 2254 Cases in the United States District
4 Courts; Local Rule 72-3.2.

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6 DATED: April 15, 2015
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R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

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